

City of Sandy Springs Board of Ethics Special Meeting held on October 8, 2008 at 9:00 a.m.

Call to Order

Chairman Maddrey called the meeting to order at 9:00 a.m.

Roll Call

Board Members Present: Glenn Moffett, Charles Maddrey, Andrew Heyward, Nancy McCord, Alternate Kirk Childs, and Alternate Richard Isenberg. Jim Langlais absent.

Staff Present: City Clerk Christina Rowland and City Attorney Wendell Willard. David Davidson, Attorney Ethics Board and Aurora Gutierrez, Court Reporter.

Approval of Agenda

Mr. Moffett moved to approve the meeting agenda. Ms. McCord seconded the motion. The motion carried unanimously.

Old Business

Hearing of the Robert Wiley Complaint – See Attachment for Evidence Hearing.

Chairman Maddrey stated that on August 14, the Board approved Vice Chairman Glenn Moffett to be the hearing officer.

Glenn Moffett stated that he will be the Hearing Officer this morning in the matter before the Board. Before we get into the evidentiary part of the hearing, Mr. Maddrey has a statement to read into the record.

Chairman Maddrey stated that this is in compliance with Article 2-157 of the Sandy Springs Code of Ethics.

1. At the end of the Special Board Meeting on July 28, 2008 I spoke to two (2) members of the press who attended the meeting: Gerhard Schneibel of the Sandy Springs Reporter and a man from a TV news station. They asked if we had heard from Mr. Wiley, and I responded that we had not and that I hoped that he would attend the upcoming hearing.
2. On July 31, I received a phone call from Gerhard Schneibel, a writer for the Sandy Springs Reporter. He called to get more information about the Wiley Complaint. I explained that as a Board member, I could not comment on the Complaint. He had a copy of the Complaint and a copy of the Ethics Ordinance. He asked if there was additional information available other than the Complaint, and I told him that I could not comment on that. He asked if Mr. Wiley had responded to the Complaint, and I responded that I was not aware of a response. He asked me how many times we had contacted Mr. Wiley, and I told him that I could not answer that. He

also asked me what the ethics issues were, and I referred him to the Complaint. He asked what factors would influence our decision at the Hearing, and I responded that I could not comment on that. He asked what actions the Board might take if Mr. Wiley is found to have violated the Ethics Ordinance, and I referred him to the Ordinance itself.

At the end of the very short phone conversation, I told Mr. Schneibel that I personally was pleased to see the press taking an interest in the works of our City. (Signed copy attached)

Hearing Officer Moffett stated that before the hearing is opened in this matter I want to remind everyone that the Board of Ethics is a newly constituted body operating under the authority of the Code of Ethics and Standards for Conduct for the City of Sandy Springs. Under these important provisions all alleged violations that have been asserted against an individual are presented to the Board for resolution and final determination.

Today, our hearing involves an Ethics Complaint filed June 20, 2008 against Robert Wiley by Wendell K. Willard, City Attorney, on behalf of the Mayor and City Council of Sandy Springs. Therefore, the Board has convened this hearing to hear evidence and issue its ruling on that complaint. It appears to the Chair and the Ethics Board that all formalities of the filing notice of the hearing upon the response of Mr. Wiley have been met. However, the chair at this time will entertain any inquiry or motions to the effect that these requirements have not been met.

Are there any such motions? The chair, hearing none, rules that all formalities including, but not limited to proper service of the complaint and notice for the hearing of the complaint against Mr. Wiley have been met, and that the hearing in this matter is duly constituted and ready for the presentation of evidence of both parties in this matter.

At this time, Mr. Moffett asked the parties or their counsel to announce their appearance and whether or not they were ready to proceed. Wendell Willard, City Attorney, and Robert Wiley were ready to proceed.

City Clerk Rowland administered the oath to all witnesses who would be testifying; Robert Wiley, Wendell Willard, Joanne Brown, Susan Maziar and Chris Thompson.

Hearing Officer Moffett closed the evidence hearing at 10:50 a.m. and turned the meeting over to Chairman Charles Maddrey for deliberations.

Hearing Transcription attached. Transcribed by: Court Reporter, Aurora Gutierrez.

Ethics Board Members Discuss and Vote on the Alleged Violations of the Ethics Ordinance

Chairman Maddrey reopened the meeting of the Ethics Board. At this time, all participation henceforth, will be by Board members, Alternates and appointed Counsel. For the first two items, the participants will have discussion on each issue and complaint. The Board will vote on whether or not they feel the allegations are true or not.

He asked the Board if they wanted to hear both issues and then vote or look at each issue separately, vote and then move to the next issue.

David Davidson, Board of Ethics Attorney, stated that with this particular item, it should be opened up for general discussion.

Chairman Maddrey and all others in attendance agreed to open with general discussion. First, referring to the City's Ordinance on definition for "public servant" the question was, does Mr. Wiley qualify as a public servant? The Board agreed that Mr. Wiley does, in fact, qualify as a public servant, because he is a volunteer on the Commission.

Mr. Maddrey stated that he will go through the issues and then come back and have discussion on each.

The issues before the Board, Section 2-105(b) and 2-105(d) in the Ethics Ordinance are as explained in the brief that came from Mr. Davidson. His response per 3(b) is: It is the responsibility of each public servant to act in a manner that contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence.

Section 2-113(a) Except as otherwise permitted under applicable federal, state and city laws and policies, including the city's procurement policies, no public servant shall have a personal interest in any official action.

Section 2-118(a) 3 Participation in the deliberation of a voting on any matter involving personal financial or personal interest.

Section 2-117(b) By accepting employment as an expert witness in the litigation results in a conflict with Ordinance, effects the public servant's official duties.

Chairman Maddrey opened discussion on issues just stated.

Nancy McCord stated the thing they were voting on had to do with the future and did not have anything to do with the house next door to Mr. Wiley at all. It has future impact. The committee did not discuss what they had intended after he recused himself. The committee totally changed the Agenda. To her, anything they decided on had no impact on going forth. She personally believes, as a private citizen, that Mr. Wiley had every right to put in the affidavit. Mr. Wiley had stated that he was not an expert witness but was in construction. Mr. Wiley is an expert, no matter what anyone says. She feels as a public citizen it had an impact on his neighborhood. The big problem is the impartiality view of it when people come to the Planning Commission. This is what needs to be stressed to people before voting on the items; you have to decide what's taken place in the past. Somehow we need to get out to the John Q public so that they feel when they do come to any of these boards there is complete partiality. We live in this community and make decisions based on the impact it has on us and our neighbors.

Mr. Moffett stated that this whole case is a case of impartiality. That is going to be the test as far as he is concerned. There is no question that Mr. Wiley is an expert and when he signed the affidavit in the litigation at that time, he was perfectly in his right to do so. There was not even a Code of Ethics at that point in time. When the Code of Ethics came to being everyone who is defined in that Code of Ethics is bound by its provisions. It is incumbent on public servants to know and apprise themselves of what is in the Code of Ethics and conduct themselves so that they are showing that they are impartial. He does not put a whole lot of credence in the fact that Mr. Wiley by filing the affidavit in that suit should be criticized for that action. He does feel like Mr. Wiley violated Section 105 (b) of the Code which does state that it

is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence. He does not for one minute feel that Mr. Wiley intentionally tried to evade or avoid the Code of Ethics. Mr. Wiley was very frank in the hearing today. He told the board that he did not think he was violating any provision of the Code of Ethics but, it is not Mr. Wiley's decision as to whether or not the appearance of impropriety has been affected by the fact that he appeared, he voted, he participated and it is clear while reading the transcript of that particular Commission and Committee meeting that Mr. Wiley was active in discussing the very issues that are so intertwined not only with litigation but in the effect of a personal interest that he had in the property near his very own home.

Mr. Moffett stated that he feels the Board's key provision is the one he just cited and it is his view that Mr. Wiley violated this provision. He does not feel that Mr. Wiley violated any other provisions.

Mr. Heyward stated that Mr. Wiley talked about how he would have nothing to do with the people that made the decision on that particular house. He questioned which board would decide? Would it be the BZA?

Mr. Moffett stated it would be the Planning Commission's decision.

Mr. Heyward stated that if Mr. Wiley's board did not make any decision that Mr. Wiley still has an opinion.

Mr. Maddrey stated that the hearing needs to be closed and keep the conversation among the Board members. The Board will try to answer that question. He suggested Mr. Heyward go back to Mr. Moffett's comment, regardless of what the action is going to be, but what was the appearance of impropriety as it appeared to be? Whether in fact it is going to affect him personally is another issue. Mr. Maddrey asked if Section 2-113(a) no public servant shall have a personal interest in any official action is what he was referring to.

David Davidson, Attorney Board of Ethics, stated he believes Mr. Wiley's participation in the meeting is what was being discussed and not the outcome of the meeting. He believes it was the actual participation in the meeting after he had received notice that there might be a conflict and is what the conversation was focused on.

Mr. Moffett stated that in that particular meeting where they were discussing how to define height on whether you use average or mean or whatever the process is, that in and of itself could have an effect that goes back to the litigation that is not yet resolved. He can guarantee the lawyers who can use that information will do so saying "Well look, the Planning Commission discussed that very thing and they don't even agree" or "they did agree and here is what they passed". It is so intertwined, the problem the Board is dealing with now. Mr. Wiley should have been a little more careful in recognizing that possibility. It's the appearance of impropriety, not that Mr. Wiley intentionally tried to say "the Code of Ethics didn't apply to him and that he's above all that. He does not believe that to be the case. Mr. Wiley was a little reckless and careless in not recognizing that he had a very important position and he did participate in this meeting, he did vote in this meeting and he was cautioned ahead of time to recuse himself. One of the purposes of our Code of Ethics is to, on occasions when we can, to warn somebody that they could be in a violation. It does not mean Mr. Wiley was at that point, but he could be.

Therefore, he thinks it should not go unnoticed by this Board. The Board needs to make it very clear that in the City of Sandy Springs, if there is any appearance of impropriety people should recuse themselves in these Commission meetings.

Chairman Maddrey stated his take on this is very much like Mr. Moffett's. He is concerned that Mr. Wiley was given a letter from the City Attorney alerting him to the fact that there could be an ethics issue and Mr. Wiley chose not to accept that. We understand now that Mr. Wiley did respond by email but was not aware of that before. Mostly, what he understood from the witnesses is that they were not aware totally of the issue affecting Mr. Wiley. They had heard some rumors but were not aware that there might be an ethics issue. The fact is, Mr. Wiley came to the meeting and should have been very uncomfortable that he didn't recuse himself. It was not a big issue for him to recuse himself from voting on something that he had taken a personal interest in. Filing the affidavit where all agreement is one thing but for him not to recuse himself was improper and should not go unnoticed.

Mr. Childs stated that he agrees that Mr. Wiley did not do anything to get personal gain out of this. As Ms. McCord said, he feels Mr. Wiley had every right to do that. He thinks any of us should we notice something in our neighborhood or in the City that we think is detrimental to the neighborhood or City; we have every right to report that. He does agree that since Mr. Wiley had been contacted by the City Attorney he should have gotten the opinion of the Committee and notified the Planning Commission that he should recuse himself. That is the very least he should have done.

Chairman Maddrey suggested everyone look through all issues that are on the complaint and vote. He noted that only Board members can vote.

Mr. Davidson stated that before the Board there are two issues that were brought up in the complaint.

Chairman Maddrey stated that the Board is not bound by what is in this complaint. It is very important to open this up to all possible or potential violations. He does not feel it will serve any purpose to go into the complaint.

Mr. Davidson stated that there are other issues the Board has talked about and the complaint is very specific on what has been brought forward. If the Board just wants to address the issues in the complaint, it can do that but, the Board also has the ability to go further with this hearing.

Chairman Maddrey stated that the first issue before the Board is, did Mr. Wiley violate Section 2-105(b) of the Ethics Code? "It is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence".

Motion and Vote: Glenn Moffett moved that Mr. Wiley did violate Section 2-105(b) It is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence of the Ethics Code. Kirk Childs seconded the motion. There was no discussion. The vote was three (3) in favor of the motion (Glenn Moffett, Andrew Heyward and Charles Maddrey). Ms. McCord abstained from vote. Mr. Childs as an Alternate could not vote.

Chairman Maddrey stated that the second issue before the Board is, did Mr. Wiley violate Section 2-105(d) "This division provides the minimum standards below which a public servant's conduct cannot fall without the risk of penalty. The principal policy which forms the foundation of this division is to encourage internal commitment by establishing and maintaining a work environment which supports integrity with pride and enthusiasm.

Glenn Moffett stated that this issue is covered in Section 2-105(b) and sees no reason to prolong that.

Motion and Vote: Glenn Moffett moved to not vote on Section 2-105(d). Nancy McCord seconded the motion. There was no discussion. The motion carried unanimously.

Chairman Maddrey stated that the third issue before the Board is, did Mr. Wiley violate Section 2-113(a), "Except as otherwise permitted under applicable federal, state and city laws and policies, including the city's procurement policies, no public servant shall have a personal interest in any official action" of the Ethics Code?

Motion and Vote: Glenn Moffett moved to not vote on Section 2-113(a), Except as otherwise permitted under applicable federal, state and city laws and policies, including the city's procurement policies, no public servant shall have a personal interest in any official action" of the Ethics Code. Kirk Childs seconded the motion. There was no discussion. The motion carried unanimously.

Chairman Maddrey stated that the fourth issue before the Board is did Mr. Wiley violate Section 2-118 (1), "Public servants of the city shall treat all citizens with courtesy, impartiality, fairness, and equality under the law, and shall avoid both actual and potential conflicts between their private self-interest and the public interest. Prohibited conduct of each such public servant shall include, but is not be limited to, the following: (c) Participating in the deliberation or voting on any matter involving personal financial or personal interest".

Motion and Vote: Glenn Moffett moved that Mr. Wiley did violate Section 2-118 (1); Public servants of the city shall treat all citizens with courtesy, impartiality, fairness, and equality under the law, and shall avoid both actual and potential conflicts between their private self-interest and the public interest. Prohibited conduct of each such public servant shall include, but is not be limited to, the following: (c) Participating in the deliberation or voting on any matter involving personal financial or personal interest. Kirk Childs seconded the motion. The motion failed 1-2, with Glenn Moffett voting in support of violation; and Nancy McCord and Andrew Heyward voting in opposition.

Chairman Maddrey stated that the last issue for consideration before the Board is, did Mr. Wiley violate Section 2-117(b) Conflict of interest? A public servant shall not accept any employment, nor enter into any contract, nor perform any service for compensation that results in a financial conflict of interest or a conflict to loyalties which would affect the performance of the public servant's official duties".

Glenn Moffett stated that he did not believe this section was violated. This section says "shall not accept any employment, nor enter into any contract, nor perform any service for compensation". It is clear; Mr. Wiley did not receive any compensation.

Chairman Maddrey stated that he tends to agree in total with Mr. Moffett although he does agree with the City Attorney that there was a type of contract with service done here that did result in a conflict of loyalty. The wording in this Section is for compensation.

Motion and Vote: Glenn Moffett moved that Section 2-117(b) is a conflict of interest. A public servant shall not accept any employment, nor enter into any contract, nor perform any service for compensation that results in a financial conflict of interest or a conflict to loyalties which would affect the performance of the public servant's official duties. The motion was seconded. The motion carried unanimously.

Ms. McCord stated that she agrees with Mr. Childs. Basically, Mr. Wiley, upon being advised that he needed to recuse himself and that he did have an obligation to the committee to do so. Personally, he needs to be admonished and it is a lesson for everyone to know that as a public servant, even though not being paid, when we are legally advised by the City Attorney, we need to stand up and take notice of that and follow through as to the whys.

Chairman Maddrey stated that the Board has voted and found Mr. Wiley in violation of Section 2-105(b) of the Ethics Code. "It is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence".

The next steps the Board can take by Ordinance are Section 2-109 "Penalties. The Board is permitted to take any action which it is otherwise lawfully permitted to take, including but not limited to, any one or combination of the following the circumstances: public admonition by recommendation to the City Council for suspension, demotion, forfeiture of office or removal from office, and/or termination from employment, as allowed by applicable law".

Mr. Childs asked what the difference between one and two is.

Chairman Maddrey stated that admonition is published authoritative advice or caution about one's action or conduct for the future. Public reprimand is a published declaratory statement that one's actionable conduct is improper but does not limit the right to continue that position. It is a question of admonition, reprimand, or recommendation for suspension to City Council.

Mr. Moffett stated that Mr. Wiley is a very dedicated public servant. He has done nothing intentional in his actions but used bad judgment and this should not go unpunished. A public written reprimand is most appropriate. He feels that Mr. Wiley should continue on the committee and to serve the City of Sandy Springs and in the future he will be reminded of some of the things he may have overlooked a little carelessly.

Appropriate Actions, if any:

Motion and Vote: Glenn Moffett moved that the Board consider issuing a written public reprimand to Mr. Wiley for his violation of Section 2-105(b) of the Code. No Second. Motion failed.

Ms. McCord stated a Board admonishment is appropriate because Mr. Wiley was advised by the City Attorney that he might be in violation and might want to recuse himself and Mr. Wiley did not follow through.

Motion and Second: Ms. McCord moved to have a published admonishment by the Ethics Board. Kirk Childs seconded the motion.

Discussion on the Motion: Mr. Moffett stated that he disagrees with this. This is more serious than what Ms. McCord is making it appear to be. We have a lawsuit for Mr. Wiley. Mr. Wiley appeared as an expert witness and his actions in the future in participating in and voting on the same questions could come back and affect this lawsuit in the future. It is a little more serious than that. He feels that this Board needs to stand up and say, definitively that this is improper and that people in the future who view these type similar situations will be a little more cautious if this Board is a little more concerned about the impact of its decision on the public. People will be more likely to cease their activities when there is an evidentiary reason for impropriety in their actions. It is more appropriate to have the public reprimand.

Vote: The motion carried 3-1, with Maddrey, Heyward and McCord in support and Moffett opposed.

Chairman Maddrey stated that the Board can take additional action, and questioned if there was further discussion by the Board to make recommendation to the City Council for public reprimand. The Board can have a combination and has the authority to make a recommendation to City Council for suspension or removal. There was no more discussion.

Mr. Moffett stated that Mr. Davidson will draft the necessary document for the Boards consideration.

Approval of Minutes from July 9 Board Meeting

Motion and Vote: Ms. McCord moved to approve the July 9, 2008 meeting minutes as presented. Mr. Moffett seconded the motion. The motion carried unanimously.

Approval of Minutes from July 28 Special Board Meeting

Motion and Vote: Ms. McCord moved to approve the July 28, 2008 meeting minutes as presented. Mr. Moffett seconded the motion. The motion carried unanimously.

Approval of Minutes from August 14 Special Board Meeting

Motion and Vote: Ms. McCord moved to approve the August 14, 2008 meeting minutes as presented. Mr. Moffett seconded the motion. The motion carried unanimously.

Committee Reports

Education Committee

Nancy McCord – No Report.

Chairman Maddrey stated that Ms. McCord has decided not to ask for reappointment to the Board. This item of the Education Committee started with him, its gestation period is 1 ½ years and it is not moving. He will be looking for someone else on the Board to chair this.

Ms. McCord suggested that at the Work Session with City Council, if appropriate, all new members of committees be given copies of the Ethic Ordinance.

Recommendations for Changes to Ethics Ordinance and Ethics Board By-Laws

Chairman Maddrey stated that the Board's changes to the Ethic Ordinance and By-Laws will be heard at the October 14, 2008 City Council Work Session.

New Business

Chairman Maddrey announced the Ethics Board Meetings for 2009 will be the second Wednesday of every month; January 14, April 8, July 8 and October 14.

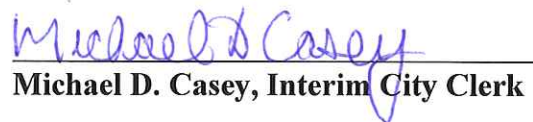
Two members of the Ethics Board have asked not to be reappointed, Nancy McCord and Jim Langlais.

City Attorney Willard advised the Board that the City Clerk will be leaving the City.

Adjournment

Motion and Vote: Mr. Moffett moved to adjourn the meeting. Ms. McCord seconded the motion. The motion carried unanimously. The meeting adjourned at 11:49 a.m.


Charles Maddrey, Chairman


Michael D. Casey, Interim City Clerk